

SERVICE DATE – FEBRUARY 27, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 730 (Sub-No. 1)

ROSTER OF ARBITRATORS—ANNUAL UPDATE

Digest:<sup>1</sup> The Board revises its roster of arbitrators who are available to resolve rail rate and practice complaints through the Board’s arbitration process.

Decided: February 26, 2019

Under section 13 of the Surface Transportation Board Reauthorization Act of 2015, Pub. L. No. 114-110, 129 Stat. 2228 (2015) (STB Reauthorization Act), codified at 49 U.S.C. § 11708, Congress directed the Board to “promulgate regulations to establish a voluntary and binding arbitration process to resolve rail rate and practice complaints” that are subject to the Board’s jurisdiction. 49 U.S.C. § 11708(a). It further provided that, unless otherwise agreed to by all parties to an arbitration, such arbitrations shall be conducted by an arbitrator or panel of arbitrators selected from a roster maintained by the Board. See 49 U.S.C. § 11708(f). To conform with the STB Reauthorization Act’s requirements, the Board adopted rules modifying its arbitration procedures, including its process for creating and maintaining a roster of arbitrators. The rules provide that the Board will update the roster of arbitrators annually. 49 C.F.R. § 1108.6(b); see also Revisions to Arbitration Procedures, EP 730, slip op. at 1, 3-4 (STB served Oct. 11, 2016).

To begin its annual update of the roster, by decision served December 6, 2018, the Board sought applications from all interested persons who wished to be considered for inclusion on the roster. The Board also requested that current arbitrators who wished to remain on the roster notify the Board of their continued availability and confirm that their biographical information on file with the Board remains accurate and, if not, provide any necessary updates. The Board received notifications of continued availability from eight current arbitrators and two applications from persons requesting to be included on the roster.<sup>2</sup>

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> The initial deadline for filing applications or notifications of continued availability was January 11, 2019. However, because of the partial shutdown of the Federal government from December 22, 2018, through January 25, 2019, the Board tolled all filing deadlines and provided a new filing deadline of February 4, 2019. See Filings Submitted or Due to Be Submitted During Partial Fed. Gov’t Shutdown, EP 751, slip op. at 1 (STB served Jan. 28, 2019). One of  
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The Board has assessed the applicants' qualifications in light of the criteria set forth in § 1108.6(b). Based on this assessment, and a review of the notifications of continued availability, the Board adopts a revised roster. The Board has added the two applicants to the roster, and, where appropriate, has updated the existing arbitrators' biographical information. Four arbitrators who did not notify the Board of their continued availability have been removed from the roster. The revised roster of arbitrators is appended to this decision.

The roster will be published on the Board's website, pursuant to § 1108.6(b). The Board will continue to update the roster annually and may modify the roster at any time through a no-objection vote.

It is ordered:

1. The Board adopts the revised roster of arbitrators appended to this decision.
2. This decision is effective on the day of service.

By the Board, Board Members Begeman, Fuchs, and Oberman.

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the two applications was filed late on February 19, 2019, but because there is no indication that the late-filed application will prejudice any party, it will be accepted.

## ROSTER OF ARBITRATORS

*The following is the list of persons available and qualified to be arbitrators based on the criteria established under 49 C.F.R. § 1108.6. The information provided herein is based on applications filed by each arbitrator. These applications are available on the Board's website ([www.stb.gov](http://www.stb.gov)) under Docket No. EP 730 (Sub-No. 1). The roster will be updated every year and may be modified by the Board at any time through a no-objection vote.*

### **Donald I. Baker**

- Attorney, Baker & Miller PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037, (202) 663-7820, [dbaker@bakerandmiller.com](mailto:dbaker@bakerandmiller.com)
- Counsels railroad clientele on matters involving antitrust, rail transportation, and economic regulation.
- Served as arbitrator in a variety of antitrust and rail disputes; authored articles on arbitrating complex disputes; member of the Center for Public Resources Panel of Distinguished Neutrals; appointed by the Center of Public Resources Legal Program to Develop Alternatives to Litigation; designated as an arbitrator by the American Arbitration Association.
- Fee: \$425/hour, which could potentially be adjusted by an agreement with the parties.

### **David C. Barrett, Jr.**

- Attorney, Barrett, Easterday, Cunningham & Eselgroth LLP, 7259 Sawmill Road, Dublin, OH 43016, (614) 210-1840, [d Barrett@farmlawyers.com](mailto:d Barrett@farmlawyers.com)
- Represents agricultural producer and agribusiness clients in matters including corporate governance, commercial transactions, commercial civil litigation, mediation, and arbitration; former member of the National Grain and Feed Association (NGFA) (in-house legal counsel, national secretary).
- Administrator of the NGFA Arbitration System; worked to establish the NGFA Rail Arbitration Rules for arbitration of specified rail issues; represented producer and agribusiness firms in arbitration before NGFA and the American Arbitration Association; member of the arbitration panel maintained by the National Futures Association; served as a mediator in a variety of cases, including court-ordered mediation cases in Ohio; completed the London-based Grain and Feed Trade Association's *Gafta* Trade Foundation Course on international grain contracts and arbitration.
- Fee: \$420/hour + costs and expenses incurred in serving as an arbitrator.

**Sharon G. Clark**

- SVP Transportation & Regulatory Affairs, Perdue AgriBusiness LLC, 6906 Zion Church Road, P.O. Box 1537, Salisbury, MD 21802, (410) 341-2609
- Experience in the agricultural industry, including grain merchandising, commodity trading, transportation, and regulatory affairs; former member of the Board's Railroad-Shipper Transportation Advisory Council; member of organizations/associations, including the National Grain and Feed Association (NGFA), National Grain Car Council, National Oilseeds Processors Association, North America Freight Car Association, and the National Freight Transportation Association.
- Member of NGFA's Executive Committee; nominated chair of NGFA's Arbitration Appeals Panel; member of NGFA Rail Arbitration Committee; arbitrator on NGFA arbitration cases; chair of arbitration for NGFA case; member of task force that originally crafted NGFA arbitration rules; member of an NGFA task force that performed a comprehensive review and overhaul of the NGFA arbitration procedural rules; to be appointed trustee of NGFA Foundation in 2019.
- Fee: \$400/hour + expenses.

**Lynn Hiser**

- President, Hiser Logistics, LLC, 4465 Ruch Road, Oakley, IL 62501, (217) 454-9331, lynn.hiser@outlook.com
- Experience in rail transportation as a shipper and payer of freight on Class I railroads and short line railroads; negotiated disputes with railroads involving rates and/or service, in addition to managing private railcar fleets of covered hoppers and tank cars; member of organizations/associations, including the National Grain and Feed Association (NGFA) Shipper-Receiver Committee, North America Freight Car Association, National Industrial Transportation League Rail Transportation Committee, the National Freight Transportation Association, and the Board's National Grain Car Council.
- Served on the NGFA arbitration committee; chairman of a rail transportation-related arbitration case.
- Fee: \$300/hour + travel expenses.

**James E. Howard**

- Attorney, James E. Howard LLC, 57 Via Buena Vista, Monterey, CA 93940, (831) 324-0233, jim@jehowardlaw.com
- Represents rail carriers and other clients with interests in rail transportation matters, including regulatory issues before the Board, transactional matters involving sales and acquisitions of rail assets and litigation.
- Member of the American Arbitration Association commercial arbitration panel; served as arbitrator in transportation cases, including car hire disputes; represented clients in arbitration and mediation proceedings.
- Fee: \$300/hour.

**Paul H. Lamboley**

- Attorney/Arbitrator/Mediator/Consultant, Law Offices of Paul H. Lamboley, 575 Forest Street, Suite 200, Reno, NV 89509, (775) 786-8333, phlamboley@aol.com
- Former Commissioner of the Interstate Commerce Commission; former law practice concentrated on transportation, antitrust, energy, environment, commercial and trade-related issues.
- Serves as a neutral (arbitrator, mediator, referee, hearing officer, short trial judge) in a full-time Alternative Dispute Resolution practice; panel memberships for arbitrator and/or mediator appointments include National Mediation Board, National Association of Railroad Referees, Surface Transportation Board, and American Arbitration Association.
- Fee: \$325/hour or \$2000 per eight-hour day or part thereof, unless otherwise determined, inclusive of travel.

**Thomas F. McFarland**

- Attorney, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1666, Chicago, IL 60604, (312) 236-0204, mcfarland@aol.com
- Experience in rail transportation and economic regulation.
- Experience in conducting arbitrations and rail transportation dispute resolution.
- Fee: \$150-250/hour, depending on the complexity of the issues to be resolved + reasonable out-of-pocket costs.

**Charles D. Nottingham**

- Principal, Charles D. Nottingham PLLC, 1701 Pennsylvania Avenue, N.W., Suite 200, Washington, DC 20006, (202) 461-2229, chip@chipnottingham.com
- Served in Congress, the Commonwealth of Virginia, the U.S. Department of Transportation, and the Surface Transportation Board; worked in private practice of law and consulting, advising transportation stakeholders on regulatory, legal, legislative, policy and economic matters; areas of expertise include freight rate rail dispute analysis and resolution and unreasonable practice claims in the rail industry.
- As Commonwealth Transportation Commissioner of the Virginia Department of Transportation (VDOT), arbitrated all large construction claim disputes between contractors and VDOT; represented clients in mediation in private practice.
- Fee: \$300-475/hour, depending on the complexity of the matter in dispute and related considerations.

**Darrell R. Wallace**

- Transportation Consultant, Wallace Transportation Consultants LLC, 17884 Westhampton Woods Drive, Wildwood, MO 63005, (314) 724-6041, drwallace@hotmail.com
- Provided rail and truck service to a number of grain and processing facilities, establishing competitive rates for the movement of those bulk grains and grain products; served as Executive Director of North America Freight Car Association and Chairman of the Board's National Grain Car Council; member of organizations/associations, including the Board's Rail Energy Transportation Advisory Council, the National Freight Transportation Association, National Industrial Transportation League, National Oilseeds Processors Association, National Council of Farmer Cooperatives, and the National Grain and Feed Association (NGFA).
- Served on NGFA's Rail Arbitration Rules Committee; served as arbitrator for NGFA on complaints submitted for arbitration and as chairman of an NGFA arbitration proceeding.
- Fee: \$300/hour + travel expenses.

**Richard R. Wilson**

- Attorney, Richard R. Wilson, P.C., P.O. Box 752, Ebensburg, PA 15931, rwilson@rrwilson.net
- Represented numerous rail carriers and other clients with an interest in rail transportation matters, including regulatory issues before the Board, transactional matters involving the acquisition, sale, and line abandonment of rail assets, and related litigation.
- Served as arbitrator or mediator in various rail transportation cases, including rail crossing cases before the Pennsylvania Public Utility Commission.
- Fee: \$250/hour.